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U.S. DISTRICT COURT  
N.D. OF ALABAMA

V.

**Defendant.**

**CR-03-BE-0530-S**

witnesses the government then believes will be witnesses in its case-in-chief. The government was well-aware when agreeing to the pretrial production of *Jencks* disclosures that Defendant was under no obligation to seek discovery of expert witness reports under Rule 16(a)(1)(G).

4. In its motion, the government seeks to withhold expert witness statements until after the expert witness has testified at trial. To postpone the production of such statements until after the witnesses have testified will only serve to undercut the currently established process to keep the case progressing in a timely fashion. Defense counsel would need a continuance after each government expert witness had testified on direct examination in order to review the expert report, conduct background research on the expert and prepare cross-examination.

5. No harm inures to the government to produce *Jencks* material pursuant to the current time schedule. It is not as if defense counsel could contact the government's expert witnesses prior to trial in hopes of garnering some advantage.

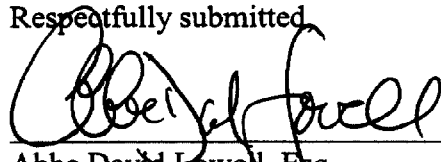
6. Finally, the government is undergoing no greater discovery requirement than Defendant. Under the same scheduling order, defense counsel will provide expert reports as reverse *Jencks* no later than one week *prior* to trial even though there is no obligation to do so under Rule 16.

### **CONCLUSION**

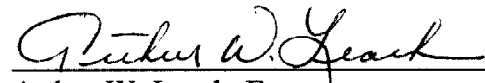
Some unavoidable issues will undoubtedly arise that will delay the progress of the trial, but the delay that would be caused by the government's suggestion is unwarranted. For the foregoing reasons, the government's Motion to Modify Discovery Order should be denied.

Dated: February 9, 2004

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2004, a copy of the foregoing Richard M. Scrushy's Opposition to Government's Motion to Modify Discovery Order was served by facsimile and overnight mail to:

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